
**IN THE
SUPREME COURT OF MISSOURI**

No. SC86335

CITY OF ST. CHARLES, MISSOURI,

Respondent,

v.

STATE OF MISSOURI, et al.,

Appellants.

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan, Judge**

Appellants' Brief

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Jurisdictional Statement

The City of St. Charles challenged the constitutionality of SB 1107 on multiple grounds. The Circuit Court granted judgment in the City's favor on Count V of its petition, holding that SB 1107 violated Article III, Section 23's prohibition against multiple subjects, and dismissed each of the City's other counts. The State appeals from this judgment, and the City has not cross-appealed. Accordingly, the only issue on appeal is whether SB 1107 violates Mo. Const. Article III, Section 23, and this Court has exclusive jurisdiction of this appeal. Mo. Const. Article V, Section 3; *National Solid Waste Management Association v. Director of the Department of Natural Resources*, 964 S.W.2d 818, 819 (Mo. banc 1998).

Statement of Facts

The City of St. Charles, Missouri filed a five-count petition in the Circuit Court, seeking a declaration that Senate Bill 1107, passed by the 91st General Assembly on May 17, 2002, violates the Missouri Constitution in various respects. LF 2, 8-35. The Circuit Court granted the City relief on Count V only. LF 196-203. In Count V, the City alleged that SB 1107 violated Mo. Const. Article III, § 23, in that it contained multiple subjects. LF 10-11.

The bill's title reflected that it would enact 43 new sections "relating to emergency services." SLF 1. It amended the following chapters:

- Chapter 87, Firemen's Retirement and Relief Systems
- Chapter 99, Municipal Housing
- Chapter 190, Emergency Services, and
- Chapter 321, Fire Protection Districts.

Id.

Plaintiff's Count V, on which judgment was granted, attacks specifically the Chapter 99 amendments, LF 11 (§§ 35-36), which pertained to tax increment financing (TIF) for developments in flood plains. These amendments added subsections 2 and 3 to § 99.847, which new sections (referred to herein as the "TIF Amendments") are set forth here in full:

2. Notwithstanding the provisions of sections 99.800 to 99.865, RSMo, to the contrary, no new tax increment financing project shall be authorized in any area which is within an area designated

as flood plain by the Federal Emergency Management Agency and which is located in or partly within a county with a charter form of government with greater than two hundred fifty thousand inhabitants but fewer than three hundred thousand inhabitants.

3. This subsection shall not apply to tax increment financing projects or districts approved prior to July 1, 2003, and shall allow the aforementioned tax increment financing projects to modify, amend or expand such projects including redevelopment project costs by not more than forty percent of such project original projected cost including redevelopment project costs as such projects including redevelopment project costs as such projects redevelopment projects including redevelopment project costs existed as of June 30, 2003, and shall allow the aforementioned tax increment financing district to modify, amend or expand such districts by not more than five percent as such districts existed as of June 30, 2003.

SLF 5-6.

The parties filed cross motions for summary judgment on Counts II through V of Plaintiff's Petition. LF 42-120, 167-168, 171-172, 188-189.¹ The Circuit Court dismissed

¹ Count I of Plaintiff's Petition alleged a violation of Mo. Const. art. III, Section

Count II (Art. III, Sec. 21 (change in purpose)), Count III (Art. III., Sec. 23 (under-inclusive title)), and Count IV (Art. III., Sec. 23 (over-inclusive title)), but granted the City's motion with respect to Count V (Art. III, Sec. 23 (multiple subjects)). LF 196-199 (the February 11, 2004, Judgment). The Circuit Court entered judgment on the multiple subject question, concluding that "[t]he amendments to [Chapter 99] incorporated into Senate Bill 1107 have no bearing, relation, relevance or natural connection with the remaining provisions of SB 1107 and fail to meet the standard of judicial review found in *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (8) (Mo. banc 1984)." *Id.* at 197 (§ 10). On that basis, the Circuit Court held that the TIF Amendments were "void and without effect and declared invalid." *Id.* at 198.

In response to the State's post-judgment motion, the Circuit Court reiterated its earlier finding that the TIF Amendments had "no bearing, relation, relevance or natural connection with the remaining provisions of Senate Bill 1107 and failed to meet the standard of judicial review found in *Westin Crown Plaza....*" LF 201 (§ 2) (the May 11, 2004, Judgment). In addition, however, the Circuit Court went on to find the TIF Amendments were severable pursuant to

20(a) in the passage of SB 1107. LF 12-13. After taking up the dispositive motions, and trial, the Circuit Court initially granted judgment to the Plaintiff on this Count but, on the State's motion, vacated this judgment and granted a re-trial. LF 196-199, 200. At the re-trial, the Circuit Court granted the State's motion for directed verdict, finding in favor of the State on Plaintiff's Article III, Section 20(a), claim. LF 203. Plaintiff has not appealed from this determination.

§ 1.140, RSMo, because the remaining provisions of SB 1107 were not “so essentially and inseparably connected with, and so dependent upon, the voided provision[s] that it cannot be presumed that the legislature would have enacted the valid provisions without the void one[s].” *Id.* at ¶ 4. The Circuit Court further held that the remaining portions of SB 1107, standing alone, were not “incomplete and . . . incapable of being executed in accordance with the legislative intent.” *Id.* Accordingly, the Circuit Court ordered the TIF Amendments severed, and declared void. *Id.*

As a re-trial of Count I was pending, the Circuit Court’s judgment in favor of Plaintiff on Count V, entered on May 11, 2004, was not then final and appealable. Following the Circuit Court’s entry of a directed verdict in favor of the State on Count I, the Circuit Court restated all of its earlier judgments in a final Judgment entered August 27, 2004. LF 203.

The State timely appealed on September 17, 2004. LF 204. The City did not cross-appeal the Circuit Court’s determinations against it.

Point Relied On

The Circuit Court erred in holding that SB 1107's amendment of § 99.847, RSMo violated Mo. Const. Article III, Section 23, because the bill did not contain multiple subjects, in that the amendments (prohibiting TIF financing for developments in flood plains designated as such by the Federal Emergency Management Agency) fairly relate to the subject of the bill (as described in the title, “emergency services”); have a natural connection to that subject; and are a means to accomplish the law’s purpose.

Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. banc 1994)

Fust v. Attorney General, 947 S.W.2d 424 (Mo. banc 1997)

Mo. Const. Article III, Section 23

Argument

The Circuit Court erred in holding that SB 1107's amendment of § 99.847, RSMo violated Mo. Const. Article III, § 23, because the bill did not contain multiple subjects, in that the amendments (prohibiting TIF financing for developments in flood plains designated as such by the Federal Emergency Management Agency) fairly relate to the subject of the bill (as described in the title, “emergency services”); have a natural connection to that subject; and are a means to accomplish the law’s purpose.

Introduction

The Circuit Court applied the wrong analysis to SB 1107 on Plaintiff’s “multiple subject” challenge, and got the wrong answer. The Circuit Court asked: Do all of the provisions of SB 1107 relate *to each other*? This Court, on the other hand, has consistently applied a test that is more practical and faithful to the language of Mo. Const. Article III, Section 23, asking: Do all of the provisions of the bill fairly relate *to the subject of the bill* as expressed in the bill’s title? As demonstrated below, each of the provisions of SB 1107 – including the TIF Amendments under attack here – relate to the bill’s subject and title: “emergency services.” Within this subject, the General Assembly could have chosen to address many related issues. In SB 1107, the General Assembly chose to address – among other issues – providing and protecting income streams sufficient to sustain emergency services. It is in this respect that the TIF Amendments relate to the subject of emergency services, and the Circuit Court’s decision invalidating those amendments should be reversed.

Standard of review

Because Count V of the Plaintiff's Petition involves pure questions of law, the Circuit Court properly resolved that Count on the parties' cross-motions for summary judgment. In reviewing the entry of summary judgment, this Court reviews the record *de novo*, in the light most favorable to the nonmoving party. *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371 (Mo. banc 1993). In performing that review, the court presumes that statutes are constitutional, and construes any doubts regarding that statute in favor of its constitutionality. *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984). Unless an act "clearly and undoubtedly" violates constitutional limitations, that act shall be upheld. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).

The test for an Article III, Section 23 (multiple subject) challenge

With certain exceptions not relevant here, Article III, Section 23 requires that "[n]o bill shall contain more than one subject which shall be clearly expressed in its title[.]" This Court has, in interpreting and applying this section, employed a practical test that respects the manner in which the co-equal legislative branch performs its critical role. *See Hammerschmidt*, 877 S.W.2d at 102 (attacks based the constitution's procedural limitations are "not favored" because the Court "ascribe[s] to the General Assembly the same good and praiseworthy motivations as inform [the Court's] decision-making process").

This Court has, historically, recognized that the words "one subject" in Article III, Section 23 must be "broadly read." *Id.* Based on cases stretching to at least 1869, this Court

has held that “‘subject’ within the meaning of Article III, Section 23, includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation.” *Id.*, citing *State v. Mathews*, 44 Mo. 523 (1869). Thus, this Court has consistently applied the following rule to challenges under Article III, Section 23: The law will be upheld if “all provisions of the bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose.” *Id.*, quoting *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. banc 1984). In determining the “subject” or “purpose” of a bill, this Court looks to the purpose articulated in the bill’s clear title. *Hammerschmidt*, 877 S.W.2d at 102.

Throughout its multiple subject jurisprudence, this Court has faithfully applied this test. In *Missouri State Medical Association v. Missouri Department of Health*, 39 S.W.3d 837, 840-841 (Mo. banc 2001), this Court rejected a “multiple subject” challenge. The Court did not inquire as to whether the challenged sections (relating to health insurance, medical records, and pre-operation information on breast implantations) were reasonably related to each other or to other provisions of the bill. Instead, the Court found that these provisions “are (at least) incidents or means to” the purpose or subject of the bill as expressed in the title, *i.e.*, “health services.”

Similarly, in *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 327 (Mo. banc 1997), this Court rejected another multiple subject challenge by determining whether the challenged sections were reasonably related to the purpose or subject of the bill as expressed in its title. There, because the purpose or subject of the bill was “intoxicating beverages,” the Court upheld

the law on the ground that each of the challenged provisions was in the liquor control chapter (Chapter 311, RSMo) and thus must fairly relate to “intoxicating beverages.”

In *Westin*, the plaintiffs claimed that a bill that originally related only to “fees and compensations of state and local registrars of vital statistics” violated Article III, Section 23, by including provisions that created new fees for tests performed by the Department of Health and increased fees for hospitals, surgical centers, and even hotels and motels. 664 S.W.2d at 5. This Court rejected that challenge, and held that the purpose of the bill was to be found in the title as passed, *i.e.*, “relating to certain fees relating to the division of health.” *Id.* at 4, 6. Thus, the Court held that all of the challenged provisions, even those “matters strictly beyond fees have a natural connection with and are incidental to accomplishing this single purpose.” *Id.* at 6.

In the cases discussed above, and all their predecessors and successors, this Court has looked to the relationship between the challenged sections and the purpose of the bill as expressed in its title. Not only has this Court never applied that test as articulated by the Circuit Court in this matter, *i.e.*, whether the challenged sections fairly related to each other and to the other sections of the bill, this Court has squarely rejected that approach on several occasions. In *Fust v. Attorney General*, 947 S.W.2d 424, 428 (Mo. banc 1997), the plaintiffs argued that a bill that tried to regulate liability insurance carriers, modify the tort liability of manufacturers, regulate pre-judgment interest, modify trial procedures for cases involving punitive damages, and establish a state tort victims’ compensation fund must have more than one subject. This Court rejected the challenge:

[T]he single subject test is *not* whether individual provisions of a bill relate to each other. The constitutional test focuses on the subject set out in the title. We judge whether [the challenged provision] fairly relates to the subject described in the title of the bill, has a natural connection to the subject, or is a means to accomplish the law's purpose.

Id. (emphasis added). *See also C.C. Dillon Company v. City of Eureka*, 12 S.W.3d 322, 328 (Mo. banc 2000) (the “multiple subject” test “does not concern the relationship between the individual provisions, but between the individual provision and the subject as expressed in the title).

As noted above, the Circuit Court asked the wrong question in this case . . . and got the wrong answer.

SB 1107 contained a single subject

As discussed, the first step in resolving Plaintiff's claim that the TIF Amendments violate Article III, Section 23 is to determine the purpose or subject of the bill. The title of SB1107 clearly sets forth that the purpose or subject of that bill is “emergency services.” SLF 1. Thus, the only question in this case is whether the TIF Amendments “fairly relate” to emergency services, have a “natural connection to” emergency services, or are “a means to accomplish” emergency services. They do.

Senate Bill 1107 contains a host of provisions applying to those individuals and entities

responsible for providing emergency services. For instance, it governs the election process within ambulance districts by mandating their division into sub-districts, and by defining the qualifications, number, and method of election and recall of members of the board of directors of the districts. SLF 6-9 (§§ 190.050, 190.051). It also contains sections pertaining to membership on a fire protection district board or to its treasurer. SLF 45-46 (§§ 321.130, 321.180). These sections, and others in SB 1107, add to or revise the many statutes that provide for the proper functioning and management of the districts that provide emergency services. Quite simply, these districts have no meaningful existence, nor can they fulfill the purpose of providing emergency services, without laws to establish, define, and effect their operation. Similarly, these districts cannot fulfill the purpose of providing emergency services without funds to support them. Senate Bill 1107 addresses this issue as well.

Senate Bill 1107 recognizes that emergency services need funding, and provides for new sales tax provisions for some emergency service districts. SLF 46 (§ 321.552.1). Senate Bill 1107, however, prohibits the imposition of these new sales taxes by an ambulance or fire protection district within certain counties of a specified size, including any county with a charter form of government with over 280,000 inhabitants, but less than 300,000 inhabitants. *Id.*

Senate Bill 1107's prohibition against new sales taxes could leave citizens in counties that fall within that prohibition – for example, St. Charles – with inadequate resources to pay for the emergency services they need, particularly if that county had areas that could require a disproportionate amount of emergency services from time-to-time – for example, flood

plains. Thus, the General Assembly's logic of including the TIF Amendments becomes clear: the TIF Amendments prohibit TIF financing in federally designated flood plains only in precisely those counties whose emergency services districts are prohibited elsewhere in SB 1107 (§ 321.552.1) from imposing new sales taxes.

Because TIF financing can divert for decades up to 50% of sales taxes from the development to pay for bonds, TIF financing in a flood plain could produce a budgetary disaster by giving emergency services districts more developments to protect – in a high risk area – with an inadequate increase in sales tax revenue to pay for it and (under SB 1107's other provisions (§ 321.552.1)) no ability to impose new sales taxes to pay for it.² The TIF Amendments to SB 1107 prevent this. By preventing TIF developments within an area for which there would be no new sales tax revenues from that area to help fund the essential emergency services of the area, the TIF Amendments are a necessary complement to, and logical corollary of, § 321.552.1; the two fit hand in glove and, together these provisions (along with the other provisions of SB 1107) clearly relate to, connect with, and promote SB 1107's subject of emergency services.

Even if the TIF Amendments did not protect sales tax revenue streams in precisely the same counties whose emergency services districts are prohibited elsewhere in SB 1107 from

² For a general discussion of the workings of TIFs, *see* Josh Reinert, Comment, TAX INCREMENT FINANCING IN MISSOURI: IS IT TIME FOR BLIGHT AND BUT-FOR TO GO? 45 St. L.U.L.J. 1019 (Summer 2001).

imposing new sales taxes, an adequate relationship to emergency services for purposes of an Article III, Section 23, analysis would still exist. Under the TIF Amendments, the prohibition on TIF financing is limited to flood plains designated as such by the Federal Emergency Management Agency (FEMA). This agency identifies “flood plains” because those are areas in which disasters occur – and emergency services are needed – when rivers rise. By discouraging (or, at least, by prohibiting tax dollars to be used to encourage) development in such areas, the TIF Amendments will (or, at least, could) impact the number of developments and corresponding residents or businesses that would require emergency services in a flood. This is an adequate, albeit a “demand-side,” relationship to the subject or purpose of emergency services.

Finally, because the emergency services that SB 1107 addresses are those emergency services provided or authorized by governmental entities, the TIF Amendments are fairly related to the overarching concern in any governmental service of budgetary responsibility. An implicit but important thread that runs through SB1107 is respect for budgetary constraints, including the vital interest of government entities – both state and local – in living within their means. Capsulized, it is the public policy of our state and local government entities never to affirmatively bring about a situation in which expenditures will exceed income. This policy is manifested in a variety of ways at the state and local levels. *E.g.*, Mo. Const. Article IV, Section 27 (governor may control rate at which any appropriation is expended, and may reduce expenditures under certain circumstances); § 50.610, RSMo (after budget hearings, county commission may revise budget items; budget as adopted must provide

revenue at least equal to expenditures); ST. CHARLES COUNTY, MISSOURI CHARTER § 6.204.3 (any amendment of budget before adoption by county council cannot increase expenditures above estimated income and beginning fund balance) and § 6.206.3 (if, during fiscal year, revenue or fund balances will be insufficient to finance authorized appropriations, county executive must inform county council without delay, and county council must take action to prevent or reduce debt)³; and CITY OF ST. CHARLES, MISSOURI CHARTER art. 8, § 8.1(d) (budget's total proposed expenditures shall not exceed estimated income)⁴.

The TIF Amendments encourage this public policy. Communities such as St. Charles, within which a flood plain is located, have enacted detailed ordinances strictly regulating and restricting the location, type, and design of structures to be located in a flood plain, to diminish the property and human loss that will occur from floods predictable in an area specifically designated and defined as a flood plain.⁵ The disastrous results of underfunded emergency

³ www.win.org/county/stcharl.htm

⁴ www.stcharlesccity.com/Government/city_charter.asp

⁵ Article XI of the St. Charles County Municipal Code, which goes on at length and in great detail, is titled, “‘FW,’ ‘FF,’ and ‘DF,’ Floodway, Floodway Fringe and Density Floodway Overlay Districts.” See footnote 3, *supra*. Section 405.245 of the Code provides that the intent of the floodway districts is “to promote the public health and safety, and to minimize ... losses from periodic flooding[.]” Subsection 1 thereof specifically refers to fostering County property owners’ eligibility for National Flood Insurance. Section 405.250 recognizes that the “flood hazard areas of St. Charles County, Missouri are subject to

services required to respond to a flood and other emergencies in the TIF development in question are not only predicable, they are certain and guaranteed. The TIF development prohibition of § 99.847 in SB1107 is at the very least a means to accomplish the law's purpose, providing for emergency services, as it is reasonably calculated to avoid disastrous results caused by underfunded emergency services and assure that local governments can establish realistic budgets.

The TIF Amendments contained in SB1107 comport with the single subject of the bill, emergency services, and are fairly related to and connected with that subject, and a means to accomplish the law's purpose. In this regard, the bill is in no significant respects different from the bills upheld, as against multiple subject challenges, in the *Missouri State Medical Association*, *Stroh Brewery*, *Westin*, *Fust*, and *C.C. Dillon*, cases, *supra*. This bill should similarly be upheld.

Conclusion

Senate Bill 1107 comports with Mo. Const. Article III, Section 23 because it does not contain multiple subjects. The Circuit Court's judgment invalidating the TIF Amendments under Mo. Const. Article III, Section 23, and severing them from the bill, should be reversed,

inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect public health, safety, and general welfare." *Id.*

and judgment in favor of the defendants should be entered accordingly.

Respectfully submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 30th day of December, 2004, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 4,067 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

Alana M. Barragán-Scott

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Mo. Const. Article III, Section 23

No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subject and accounts for which moneys are appropriated.